



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

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August 28, 2017

BY ECF

Honorable Steven Tiscione
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Clase v. The City of New York, et al.*
Civ. No. 17-CV-2247 (MKB) (ST) (E.D.N.Y.)

Dear Magistrate Judge Tiscione:

This Office represents the United States and ATF Special Agent Thomas Kalogiros ("Federal Defendants") in this action brought by Wellington Clase ("Plaintiff"), against the City of New York, the United States, and numerous individual city and federal law enforcement officers, in which plaintiff claims *inter alia*, that he was falsely arrested, and prosecuted by the Queens District Attorney's Office, in connection with a 2013 firearms sale.

Counsel for the City of New York and Detective John Barratt ("City Defendants"), on behalf of all parties, has filed a Discovery Plan Worksheet preparatory to the September 15, 2017 conference before Your Honor. *See* Docket Entry ("DE") No. 22. Federal Defendants write to inform the Court that they plan to file a pre-motion letter on or before September 11, 2017, to outline their proposed dispositive motion, which will seek dismissal or summary judgment as to all claims pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6) and 56(a).¹

In support of their anticipated dispositive motion, Federal Defendants plan to submit documents that generally correspond to those described in the Phase I section of Your Honor's Discovery Plan Worksheet; these documents are not voluminous and relate to the nature of the law

¹ The general thrust of Federal Defendants' anticipated motion is that the Plaintiff's malicious prosecution and false arrest claims fail because the United States, and its employees, had probable cause to suspect that Plaintiff sold the firearm at issue; that Plaintiff's Federal Tort Claims Act ("FTCA") claims fail to state a plausible or cognizable tort that may be asserted against the United States; and that Special Agent Kalogiros is entitled to qualified immunity and/or dismissal of the claims against him because 42 U.S.C. § 1983 is inapplicable to federal agents, and that in any event, the complaint fails to plausibly allege his personal involvement in any unconstitutional conduct that could be pursued under the rubric of a *Bivens* claim.

Honorable Steven Tiscione

Page 2

enforcement operation at issue in this case.² Indeed, these documents comprise essentially all of the relevant documentary material in Federal Defendants' possession. However, aside from production of these materials, Federal Defendants will respectfully request that discovery as to Federal Defendants be stayed pending resolution of their proposed dispositive motion.

The Federal Defendants believe that a stay of discovery pending disposition of their dispositive motion is warranted and appropriate because it will streamline the discovery process by focusing efforts on the exchange of information regarding the issues for which discovery will be necessary, and will promote the judicious use of the parties and the Court's resources.

Respectfully submitted,

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² Federal Defendants anticipate seeking a protective order relative to these documents, which contain sensitive law enforcement material. Federal Defendants will consult with the other parties to seek agreement on a proposed stipulation and confidentiality order for the Court's consideration.